

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

<p>ERIC YEH, on behalf of himself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>THE HERSHEY COMPANY, 19 E. Chocolate Ave., Hershey, PA 17033, and RAINFOREST ALLIANCE INC., 27 E. 28th St. 8th Floor, New York, NY 10016,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. _____</p> <p>CLASS ACTION COMPLAINT</p> <p><u>DEMAND FOR JURY TRIAL</u></p>
--	--

Plaintiff Eric Yeh (“Yeh”), individually and on behalf of himself and other similarly situated individuals, by and through his counsel, hereby files this Class Action Complaint for equitable relief and damages against The Hershey Company (“Hershey”) and Rainforest Alliance Inc. (“Rainforest Alliance”) (collectively, “Defendants”) regarding their false and deceptive marketing and sale of Hershey’s organic and plant-based chocolate bars that contain Rainforest Alliance certified cocoa (the “Products”)¹ as ethically sourced and “sustainable” when in fact, the supply and production of these Products contribute to grievous and unsustainable labor abuses, including the worst forms of child labor and/or forced labor² (“child labor”), as well as other

¹ Hershey markets all of its organic chocolate products as sustainable, including but not limited to its Hershey’s Organic Milk Chocolate Candy Bars, Hershey’s SPECIAL DARK Organic Chocolate Bars, and Hershey’s Organic Miniatures Milk Chocolate Candy Bars. *See Organic Products & Recipes*, Hershey, <https://www.hersheyland.com/ingredients/organic.html> [https://web.archive.org/web/20230607182305/https://www.hersheyland.com/ingredients/organic.html]. All chocolate products marketed this way fall within the scope of this Complaint.

² Child labor as defined by International Labour Organization (“ILO”) Conventions 138 on the Minimum Age for Admission to Employment and 182 on the Worst Forms of Child Labor, *see What are Child Labor, Forced Labor, and Human Trafficking?*, U.S. Department of Labor (“DOL”),

exploitive labor practices, that are endemic in the cocoa industry. Through the Rainforest Alliance seal that is prominently displayed on the Products, containing the words “People & Nature,” Hershey and Rainforest Alliance tell consumers that the Products are responsibly sourced in a way that is not harmful to “people” or “nature,” and that the Products’ supply chains are rigorously vetted for ethical labor standards and sustainable environmental practices. Reasonable consumers seeking to buy sustainable, ethically-sourced cocoa products are misled by the Rainforest Alliance seal on the Products which are neither ethically sourced nor environmentally sustainable. In fact, the Products are the result of child labor and destructive environmental practices such that they are harmful to “people” and “nature.”

INTRODUCTION

1. This is a consumer-protection case concerning deceptive marketing representations made about Hershey’s organic and plant-based chocolate products made with Rainforest Alliance-certified cocoa.

2. The use of fair and sustainable labor practices is of growing concern to consumers, who increasingly seek out products that are made without the use of forced labor, child labor, or exploitative working conditions, especially in industries known for their use of such practices.

3. Cocoa farming is one such industry, with a well-publicized history of utilizing the worst forms of child labor and/or forced labor in chocolate production.³ According to the 2020 NORC Report from the U.S. Labor Department, about 1.56 million children work on cocoa farms

<https://www.dol.gov/agencies/ilab/resources/what-is-child-labor-human-trafficking> (last visited Jan. 17, 2024).

³ Cocoa is listed as a good produced by child labor or forced labor, *see List of Goods Produced by Child Labor or Forced Labor*, DOL, <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods> (last visited Jan. 17, 2024).

in Côte d'Ivoire and Ghana,⁴ the two countries where roughly two-thirds of the world's cocoa supply comes from. Much of this work is considered by international authorities to be one of "the 'worst forms of child labor.'"⁵ Reports have uncovered that children as young as 10 years old are used for "arduous manual labor" to meet the demand on cocoa farms.⁶

4. Consumers who wish to purchase more ethical products from industries that are known to have problematic supply chains rely on the products' packaging, marketing, advertising, and relevant certifications to purchase products that align with their values, and to avoid abuses in labor.

5. Defendant Hershey, a privately held company based in Pennsylvania and incorporated in Delaware, is one of the largest chocolate manufacturers in the world⁷ and claims to have "achieved 100 percent certified and sustainable cocoa" in part by sourcing through Rainforest Alliance certified cocoa farms.⁸

6. Defendant Rainforest Alliance is an international non-governmental organization ("NGO") incorporated in New York with offices throughout the United States, and which, among other things, certifies products for their sustainability, represents that its "certification seal means that the product (or a specified ingredient) was produced by farmers, foresters, and/or companies

⁴ NORC Final Report: Assessing Progress in Reducing Child Labor in Cocoa Production in Cocoa Growing Areas of Cote d'Ivoire and Ghana, NORC (October 19, 2020), https://www.norc.org/PDFs/Cocoa%20Report/NORC%202020%20Cocoa%20Report_English.pdf.

⁵ Peter Whoriskey and Rachel Siegel, *Cocoa's Child Laborers*, The Washington Post (June 5, 2019), <https://www.washingtonpost.com/graphics/2019/business/hershey-nestle-mars-chocolate-child-labor-west-africa/>.

⁶ *Id.*

⁷ Kate Birch, *Top 10 largest chocolate companies*, Food Digital (July 7, 2021), <https://fooddigital.com/food/top-10-largest-chocolate-companies>.

⁸ Sustainability: Cocoa, Hershey, https://www.thehersheycompany.com/en_us/home/sustainability/sustainability-focus-areas/cocoa.html [https://web.archive.org/web/20211018051917/https://www.thehersheycompany.com/en_us/home/sustainability/sustainability-focus-areas/cocoa.html].

working together to create a world where people and nature thrive in harmony.”⁹ Rainforest Alliance represents to consumers that its seal “amplifies and reinforces the beneficial impacts of responsible choices, from farms and forests all the way to the supermarket check-out.”¹⁰ Furthermore, Rainforest Alliance claims that “the seal allows [consumers] to recognize and choose products that contribute toward a better future for people and planet.”¹¹ The Rainforest Alliance encourages consumers to “Find the Frog,” representing to consumers that its “green frog [logo] is a symbol of environmental, social, and economic sustainability.”¹²

7. Hershey pays Rainforest Alliance for the certification of the cocoa used in its Products, which allows Hershey to use and display the seal on its Products, thereby representing to consumers that the Products satisfy environmental, social, and economic sustainability standards.

8. Rainforest Alliance purports that the products it certifies are “audited against sustainability standards based on the triple bottom line: environmental, economic, and social well-being,”¹³ for a “more resilient and inclusive future.”¹⁴

9. Defendants market the Products to consumers as “grown and harvested on farms and forests that follow sustainable practices.”¹⁵

10. Despite claiming to have achieved “100 percent certified and sustainable cocoa,”

⁹ *What Our Seal Means*, Rainforest Alliance, <https://www.rainforest-alliance.org/insights/what-does-rainforest-alliance-certified-mean/> (last visited Jan. 17, 2024).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Find The Frog*, Rainforest Alliance, <https://www.rainforest-alliance.org/find-certified/?location=&keyword=> (last visited Jan. 17, 2024).

¹³ *2020 Certification Program*, Rainforest Alliance, <https://www.rainforest-alliance.org/for-business/2020-certification-program/> (last visited Jan. 17, 2024).

¹⁴ *Advances for People and Nature in Our Certification Program*, Rainforest Alliance (Aug. 10, 2020), <https://www.rainforest-alliance.org/insights/advances-for-people-and-nature-in-our-certification-program/>.

¹⁵ *Certified Product: Hershey’s*, Rainforest Alliance (Mar. 11, 2022), <https://www.rainforest-alliance.org/find-certified/hersheys/>.

in actuality, Hershey only has 68 percent sourcing visibility by cocoa volume, meaning only 68 percent of its cocoa was “from known farmers and farmer groups and independently verified.”¹⁶ The simple fact is that Hershey does not know whether 32 percent of its cocoa volume is sustainable—or not. Without the ability to trace 100 percent of its cocoa, Hershey cannot substantiate its claims that the cocoa used in its Products is 100 percent sustainable and thus, the statement in Hershey’s consumer marketing materials is false.

11. Hershey also claims that its cocoa is “100 percent independently verified” by Rainforest Alliance, however, as Hershey knows, the Rainforest Alliance cocoa certification uses a weak “assess and address” approach which allows farms with instances of child labor, forced labor and/or other unethical labor abuses to remain certified, with only a technical obligation to “remediate.”

12. In contrast to its marketing representations, Rainforest Alliance is not able to confirm that the cocoa it provides to Hershey is responsibly harvested, as this “assess-and-address”¹⁷ approach, as Rainforest Alliance calls it, is mere guidance, not “verification”.

13. Investigations reveal that unfair labor practices and hazardous child labor has been found on Rainforest Alliance certified farms, and that Rainforest Alliance has done little to improve the problematic working conditions for cocoa farmers and their families.¹⁸ Indeed, reports have uncovered that fewer than 10 percent of cocoa farms certified by organizations such

¹⁶ Angela Tejada Chavez, *What Cocoa Sustainability Means at Hershey*, Hershey, https://www.thehersheycompany.com/en_us/home/newsroom/blog/what-cocoa-sustainability-means-at-hershey.html (last visited Jan. 17, 2024).

¹⁷ *What’s in our 2020 Certification Program? Assess-and-Address*, Rainforest Alliance (June 2020), <https://www.rainforest-alliance.org/wp-content/uploads/2020/06/2020-program-assess-address.pdf>.

¹⁸ Allie Brudney, *CAL Finds Evidence of Child Labor on Rainforest Alliance Certified Farms*, Corporate Accountability Lab (“CAL”) (Oct. 25, 2021), <https://corpaccountabilitylab.org/calblog/2021/10/25/cal-finds-evidence-of-child-labor-on-rainforest-alliance-certified-farms>.

as Rainforest Alliance are actually inspected.¹⁹

14. Rainforest Alliance is paying well below the necessary living income to farmers for its certified cocoa, requiring only that a \$70 “minimum Sustainability Differential” be paid for certified cocoa in addition to the market price for non-certified cocoa. Therefore, contrary to Hershey’s and Rainforest Alliance’s representations, paying certified cocoa farmers well below a living income is neither sustainable nor ethical.

15. Consequently, Defendants’ marketing—which leads consumers to believe that the cocoa in its Products is responsibly sourced and “sustainable”—is false and misleading.

16. By deceiving consumers about the nature and quality of its Products, Hershey is able to sell a greater volume of the Products, to charge higher prices for the Products, and to take market share away from competing products, thereby, increasing its own sales and profits.

17. By certifying the cocoa used in the Products, Rainforest Alliance deceives consumers as it does not have sufficient mechanisms in place to actually ensure that any of the certified cocoa used in the Products is ethically sourced or sustainable.

18. Rainforest Alliance, however, profits from licensing and other fees, and profits more when Hershey sells more of the Products, through its volume-based royalty payment structure.²⁰

19. Rainforest Alliance, thus, colludes with Hershey by professing to responsibly source and sustainably harvest the cocoa used in the Products, to profit through consumer deception.

¹⁹ Whoriskey, et al., *supra* note 5.

²⁰ *How Much Does Rainforest Alliance Certification Cost?*, Rainforest Alliance (Oct. 18, 2023), <https://www.rainforest-alliance.org/business/certification/how-much-does-rainforest-alliance-certification-cost/>.

20. By allowing Hershey to use its certification to deceive consumers, and by promoting that certification for the purpose of increasing Product sales, Rainforest Alliance participates in the marketing of the Products.

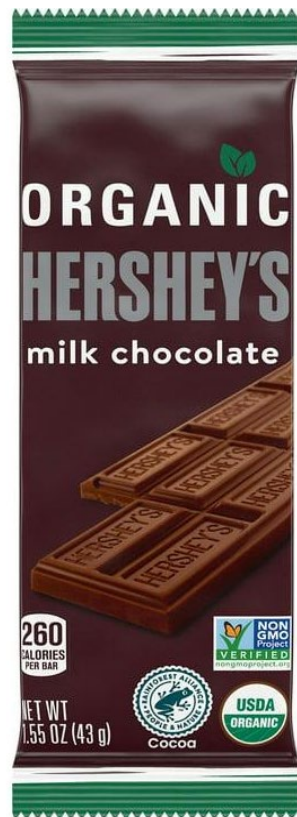
21. Because Defendants' marketing of the Products tends to mislead and is materially deceptive about the true nature and quality of the Products, Plaintiff Yeh brings this case on behalf of himself, and all others similarly situated and seeks equitable and monetary relief.

FACT ALLEGATIONS

I. Defendants Represent that the Cocoa Contained in the Products Is Responsibly Sourced and Sustainable.

A. Hershey Represents that the Cocoa Contained in its Products is Responsibly Sourced and Sustainable.

22. On its Products' packaging labels, Hershey makes sustainability representations to consumers through its prominent display of the Rainforest Alliance certification seal.



23. Should any consumer who sees these representations on the Products' packaging seek more information, Hershey repeats and even expands upon the promises online, directly on the Organic Chocolate Products informational page.²¹

Hershey's Sustainable Cocoa Strategy

Many shoppers choose organic not just for the better ingredients but for the way production impacts the planet and communities worldwide. We feel the same way about how sourcing our cocoa affects the surrounding environment and communities. Fulfilling our pledge, as a company, we have reached **100% certified and sustainable cocoa as of January 2020**. We're also investing half a billion dollars by 2030 to benefit cocoa-farming communities through our **Cocoa for Good pledge**.

24. Hershey further expands on these claims on their "Cocoa for Good" pledge page, representing that they "have long believed in doing good" and "believe Cocoa Farmers deserve a decent standard of living."²²

25. Additionally, Hershey represents that it is "improving the lives of farmers that grow the ingredients that go into [its] products" and "reducing [its] impact on the planet."²³

²¹ *Organic Chocolate Everyone Can Enjoy*, Hersheyland (Mar. 30, 2020), <https://www.hersheyland.com/stories/organic-chocolate-everyone-can-enjoy.html>.

²² *Sustainability: Cocoa*, *supra* note 8.

²³ *Shared Goodness That's Our Promise*, Hershey, https://www.thehersheycompany.com/en_us/home/sustainability.html (last visited Jan. 17, 2024).



26. Hershey also represents that it has a “Deep Commitment to Responsible Cocoa Sourcing”²⁴ and that it has “achieved 100 percent certified and sustainable cocoa.”²⁵

27. Hershey states in its 2022 ESG report that it “continues to deliver on [its] commitment of 100% independently verified cocoa, which [it] achieved in 2020,”²⁶ citing Rainforest Alliance as one of its independently verified certifiers.

²⁴ See Angela Tejada Chavez, *supra* note 16.

²⁵ *Sustainability: Cocoa*, *supra* note 8.

²⁶ *The Goodness Inside*, 2022 ESG Report, Hershey, at 28, <https://www.thehersheycompany.com/content/dam/hershey-corporate/documents/pdf/hershey-2022-esg-report.pdf> (last visited Jan. 17, 2024).



Our Priority Cocoa Goals

100% Independently Verified Cocoa

To continue to deliver on our commitment of 100% independently verified cocoa, which we achieved in 2020, we continue to collaborate with third-party certifiers, including the Rainforest Alliance and Fair-Trade USA, as well as independently verified programs through our suppliers.

28. Continuing these promises, Hershey represents to consumers that they can “rest assured that the chocolate [they’re] enjoying is sustainably sourced.”²⁷

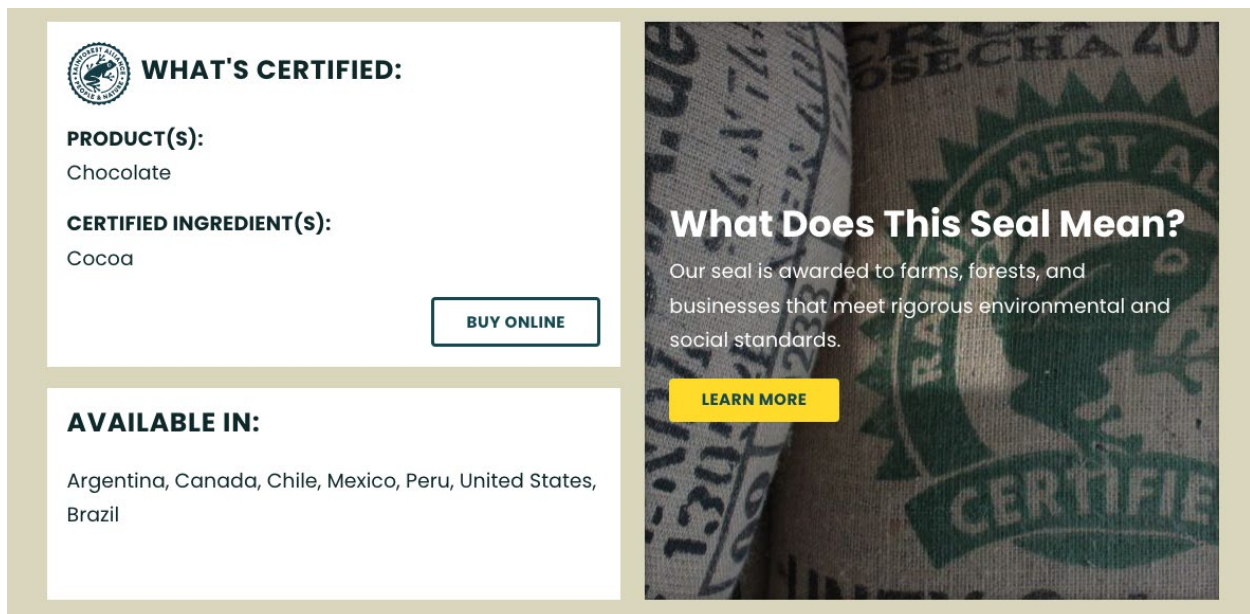
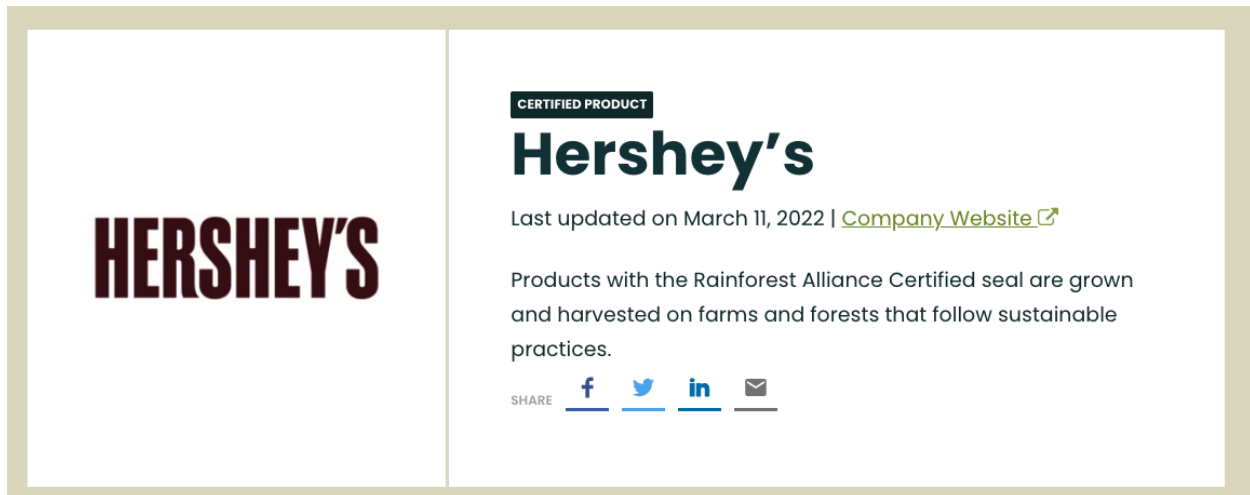


29. These representations from Hershey are reinforced by the Rainforest Alliance certification of its cocoa on its Organic and Plant-Based Products.

²⁷ The Hershey Company (@HersheyCompany), Twitter (July 6, 2020 10:43 AM), <https://twitter.com/hersheycompany/status/1280150322296602625?lang=en>.

B. Rainforest Alliance Represents that the Cocoa Contained in Hershey Products is Responsibly Sourced and Sustainable.

30. Rainforest Alliance claims that its “little green frog is a symbol of environmental, social, and economic sustainability . . .”²⁸ and that “addressing human rights abuses in agriculture and forestry is a key focus of [its] work.”²⁹



²⁸ *Find the Frog*, *supra* note 12; *see also Certified Product: Hershey's*, *supra* note 15.

²⁹ *Human Rights*, Rainforest Alliance, <https://www.rainforest-alliance.org/issues/human-rights> (last visited Jan. 17, 2024).

31. Rainforest Alliance represents that “[f]arms, forest communities, and businesses that participate in our certification program are audited against sustainability standards based on the triple bottom line: environment, economic, and social well-being.”³⁰

32. Rainforest Alliance’s “little green frog” seal was updated to specifically include the words “people and nature” to represent that products bearing this seal are certified by Rainforest Alliance to meet high human rights as well as its “rigorous” environmental standards.³¹



33. Rainforest Alliance advertises that it is “creating a more sustainable world by using social and market forces to protect nature and improve the lives of farmers and forest communities.”³²

II. Hershey’s Rainforest Alliance-certified Cocoa Chocolate Products are Not Sustainable and Are Linked to Unfair Labor Practices and Hazardous Child Labor.

34. Contrary to Defendants’ representations, the Rainforest Alliance certified cocoa contained in the Products is neither responsibly sourced nor sustainable.

³⁰ 2020 Certification Program, *supra* note 13.

³¹ *Using Our Logo and Seal*, Rainforest Alliance, <https://www.rainforest-alliance.org/business/marketing-sustainability/using-our-logo-and-seal/> (last visited Jan. 17, 2024).

³² *Our Approach*, Rainforest Alliance, <https://www.rainforest-alliance.org/approach/> (last visited Jan. 17, 2024).

A. Hershey's Rainforest Alliance-certified Cocoa, Organic Chocolate Products are Linked to Unfair Labor Practices and Hazardous Child Labor.

35. The sourcing and production of the cocoa used in these Products involves unfair labor practices, hazardous child labor and exploitive working conditions.³³

36. For example, a recent report by the *Washington Post* revealed that about two-thirds of the world's cocoa supply, including Hershey's, comes from West Africa,³⁴ where, according to a Department of Labor funded NORC Report, more than 1.56 million children work in the cocoa sector, including 1.48 million children who have been "exposed to at least one component of hazardous child labor in cocoa production."³⁵

37. Despite Hershey's promise that it "has achieved 100 percent certified and sustainable cocoa," reports as recent as December 2020 show that the company can trace *less than half* of its cocoa back to any specific farm.³⁶

38. And as recently as 2021, Hershey itself stated that it only has 68 percent sourcing visibility by cocoa volume, meaning only 68 percent of its cocoa was "from known farmers and farmer groups and independently verified."³⁷ Accordingly, Hershey acknowledges that it does not know where 32 percent of its cocoa is coming from and thus cannot truthfully represent to consumers that it has achieved 100 percent sustainable cocoa. This is particularly true where Hershey knows that the cocoa farming industry is rife with child labor and thus 32 percent of its

³³ Adrian Horton, *John Oliver on child labor in the chocolate industry: 'It is worse than you may realize,'* The Guardian (Oct. 30, 2023), <https://www.theguardian.com/tv-and-radio/2023/oct/30/john-oliver-last-week-tonight-chocolate-industry-child-labor>.

³⁴ Whoriskey, et al., *supra* note 5.

³⁵ NORC, *supra* note 4, at 10.

³⁶ Whoriskey, et al., *supra* note 5.

³⁷ Angela Tejada Chavez, *supra* note 16.

cocoa is likely derived from hazardous child labor despite Hershey's representations to the contrary.

39. Furthermore, farmers on typical Ivorian and Ghanaian cocoa farms, from which Hershey sources some of its cocoa,³⁸ live well below what the World Bank defines as poverty, earning less than a dollar a day.³⁹

40. The price that Hershey pays for cocoa from Cote d'Ivoire and Ghana is less than half of the Living Income Price,⁴⁰ making it all but impossible for farmers to produce cocoa sustainably when they do not earn enough to cover their basic needs.⁴¹

41. Upon information and belief, Hershey manipulates the futures market to purchase cocoa beans anonymously in an attempt to avoid payment of the Living Income Differential ("LID"), which requires chocolate companies to pay an extra \$400 per ton of cocoa purchased to support impoverished cocoa farmers.⁴²

42. Hershey markets the Products as containing cocoa that is "certified" by Rainforest Alliance as a way to indicate to consumers that exploitive labor practices are not used in the Products, but it knows that exploitive labor is still used, and that Rainforest Alliance's auditing and certification processes consistently fail to prevent human rights abuses.

³⁸ Angela Tejada Chavez, *Hershey Cocoa For Good: 2020 Farmer Groups (89) supplying Hershey's under Cocoa For Good, Hershey*, https://www.thehersheycompany.com/en_us/home/newsroom/blog/going-beyond-fair-trade-with-hersheys-sustainable-cocoa-strategy.html (last visited Jan. 17, 2024).

³⁹ Whoriskey, et al., *supra* note 5; Antoine C. Fountain & Friedel Huetz-Adams, *2020 Cocoa Barometer*, Voice Network, <https://www.voicenetwork.eu/wp-content/uploads/2021/03/2020-Cocoa-Barometer-EN.pdf> (last visited Jan. 17, 2024).

⁴⁰ *Necessary Farmgate Prices for a Living Income*, Voice Network, (January 2020), <https://www.voicenetwork.eu/wp-content/uploads/2020/01/200113-Necessary-Farm-Gate-Prices-for-a-Living-Income-Definitive.pdf>.

⁴¹ *2020 Cocoa Barometer*, *supra* note 39.

⁴² Christian Peña, *The war on cocoa: Hershey Co. accused of not upholding sustainability efforts in West Africa*, NBC (Dec. 12, 2020), <https://www.nbcnews.com/business/business-news/war-cocoa-hershey-co-accused-not-upholding-sustainability-efforts-west-n1250798>.

43. For example, an investigation by *Repórter Brasil* published in December 2016 found problematic labor conditions and environmental practices in violation of Rainforest Alliance’s standards at one of its “certified” farms.⁴³

44. Additionally, a 2015 joint investigation by Radio 4’s *File* and BBC News in Assam, India into the working conditions at plantations that Rainforest Alliance had certified found that workers experienced “dangerous and degrading living and working conditions.”⁴⁴

45. Rainforest Alliance’s supply-chain certification program⁴⁵ is misleading to consumers, as the placement of its seal on the Products would lead a consumer to believe that it could trace the supply chain of the cocoa back to the certified farm, when in reality, neither Hershey nor Rainforest Alliance is able to verify that the cocoa used in the Products is harvested without the use of unfair labor practices or hazardous child labor.

46. Rainforest Alliance points interested applicants to other “certification bodies that are authorized to carry out audits.”⁴⁶ This scheme of passing the blame from one company to the next is further illustrated in Rainforest Alliance’s “assess-and-address approach,” which essentially allows farms to self-certify that they are in compliance with Rainforest Alliance’s requirements and is a far cry from the robust verification process that a reasonable consumer would expect when it views the Rainforest Alliance seal on the Products.

⁴³ *Certified Coffee, Rightless Workers*, Repórter Brasil (Dec. 2016), https://reporterbrasil.org.br/wp-content/uploads/2016/12/Cafe%CC%81_ING_Web.pdf.

⁴⁴ Justin Rowlett & Jane Deith, *The bitter story behind the UK’s national drink*, BBC (Sept. 8, 2015), <https://www.bbc.com/news/world-asia-india-34173532>.

⁴⁵ *2020 Certification Program*, *supra* note 13.

⁴⁶ *List Of Authorized Certification Bodies For The Rainforest Alliance 2020 Sustainable Agriculture Standard*, Rainforest Alliance, <https://www.rainforest-alliance.org/wp-content/uploads/2021/07/authorized-certification-bodies.pdf> (last visited Jan. 17, 2024).

47. Thus, although Hershey and Rainforest Alliance market to consumers that the cocoa in its Products is “sustainable” and “100 percent verified,” the reality of the Products’ supply chain reveals that these claims are false and deceptive.⁴⁷

B. Hershey’s Rainforest Alliance-Certified Cocoa, Organic Chocolate Products are Not Sustainable as They Contribute to Deforestation.

48. Deforestation is widely known to be associated with cocoa harvesting.⁴⁸ The cocoa industry is a major driver of deforestation and loss of critical wildlife habitat around the world, but particularly in West Africa where Hershey sources its cocoa and where many Rainforest Alliance certified farms are located.⁴⁹

49. About one-third of forest loss in Côte d’Ivoire and Ghana has occurred due to cocoa production over the last 60 years.⁵⁰ This is because of the monocropping systems used to cultivate the cocoa, which relies on the planting and production of one crop, reducing the availability of certain nutrients, and degrading the soil, and usually requires a heavy reliance on pesticides and other chemicals, which then pollute the soil as well as adjacent rivers and streams, threatening wildlife and disrupting food systems.⁵¹

⁴⁷ Rainforest Alliance merged with UTZ in 2018, a company with a known history of supplying “responsibly certified cocoa” that actually came from farms that were using child labor (*see* Peter Whoriskey, *Chocolate companies sell ‘certified cocoa.’ But some of those farms use child labor, harm forests*, Washington Post (Oct. 23, 2019), <https://www.washingtonpost.com/business/2019/10/23/chocolate-companies-say-their-cocoa-is-certified-some-farms-use-child-labor-thousands-are-protected-forests/>). In 2020, Rainforest Alliance introduced its new seal after the merger (*see UTZ Certification (Now Part of the Rainforest Alliance)*, Rainforest Alliance, <https://www.rainforest-alliance.org/utz/> (last visited Jan. 17, 2024)) as well as “reimagined” its certification process which “builds on the UTZ approach to child labor,” called its “access-and-address” certification program (*see supra* note 17.).

⁴⁸ Nikolai Kalischek, et al., *Cocoa plantations are associated with deforestation in Coete d’Ivoire and Ghana*, Nature (May 22, 2023), <https://www.nature.com/articles/s43016-023-00751-8>.

⁴⁹ *Cocoa and Deforestation*, International Wildlife Conservation, <https://international.nwf.org/cocoa-and-deforestation/> (last visited Jan. 17, 2024).

⁵⁰ *Id.*

⁵¹ Martina Igini, *How Does Cocoa Farming Cause Deforestation?*, Earth.org (July 7, 2023), <https://earth.org/how-does-cocoa-farming-cause-deforestation/>.

50. According to the UN's Food and Agriculture Organization, nearly 4 million hectares of African forests are being cut down each year, at almost double the speed of the world's deforestation average, with cocoa farming contributing to much of the deforestation.⁵²

51. Although the world's major cocoa companies, including Hershey, signed an initiative to harvest cocoa more sustainably and prevent deforestation, the lack of traceability and supply chain transparency prevents the halt of cocoa-driven forest loss.⁵³

52. Rainforest Alliance has been linked with deforestation. Greenpeace found in its report, "Destruction: Certified (2021)" that "in 2019 the Rainforest Alliance admitted identifying severe non-compliances among certificate holders in West Africa with respect to traceability, deforestation and farming in protected areas."⁵⁴

53. Hershey's Rainforest Alliance-certified cocoa organic chocolate Products are not sustainably produced as cocoa harvesting is inherently unsustainable due to its significant contribution to deforestation throughout the world and specifically in Africa, where Hershey sources and Rainforest Alliance certifies the cocoa in the Products.

III. Defendants' Representations Are Material and Misleading to Consumers.

54. Defendants' false and misleading representations that the cocoa used in Hershey's Rainforest Alliance certified cocoa Products is "sustainable," "100 percent certified

⁵² *Id.*

⁵³ Terry Slavin, *After five years, recipe to end deforestation from cocoa farming remains elusive*, Reuters (Jan. 20, 2023), <https://www.reuters.com/business/sustainable-business/after-five-years-recipe-end-deforestation-cocoa-farming-remains-elusive-2023-01-20/>; *see also Joint Framework for Action Côte d'Ivoire, Cocoa & Forests Initiative* (Sept. 21, 2022), <https://jaresourcehub.org/wp-content/uploads/2023/03/CDI-Framework-English-9.21.22.pdf>.

⁵⁴ *Destruction: Certified*, Greenpeace Int'l, at 63 (Mar. 10, 2021), https://www.greenpeace.org/static/planet4-international-stateless/2021/04/b1e486be-greenpeace-international-report-destruction-certified_finaloptimised.pdf.

and sustainable,” “responsibly sourced,” meets “rigorous sustainability standards,” and is certified with “the highest level of assurance” are material to consumers.

55. The Federal Trade Commission (“FTC”) has determined that unqualified general environmental benefit claims such as “sustainable” “imply certain specific environmental benefits.”⁵⁵ For that reason, the FTC has admonished companies not to use unqualified claims such as “sustainable” due to its determination that “it is highly unlikely that they can substantiate all reasonable interpretations of these claims.”⁵⁶ Furthermore, according to the FTC, marketers retain responsibility for substantiating all claims that are reasonably communicated by a third-party certification.⁵⁷

56. Consumers care deeply about exploitive labor practices in supply chains. A national survey found that “60 percent of consumers would stop using a product if they knew that human trafficking or forced labor was used to create it.”⁵⁸

57. A majority of consumers would stop buying from brands that they believe are unethical. Moreover, “over one third (35 percent) of consumers would stop buying from brands they perceive as unethical even if there is no substitute available.”⁵⁹ Additionally, 63 percent of “consumers feel that ethical issues are becoming more important.”⁶⁰

⁵⁵ *FTC Sends Warning Letters to Companies Regarding Diamond Ad Disclosures*, FTC (Apr. 2, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-sends-warning-letters-companies-regarding-diamond-ad>; *see also* FTC Green Guides, 16 C.F.R. § 260.4(b) (2012).

⁵⁶ *Id.*

⁵⁷ *See* 16 C.F.R. § 260.6(c).

⁵⁸ Stephen DeAngelis, *Even If Consumers Aren’t Aware of Human Trafficking, Companies Need to Be*, Enterra Solutions, (Mar. 6, 2020), <https://enterrasolutions.com/blog/even-if-consumers-arent-aware-of-human-trafficking-companies-need-to-be/>.

⁵⁹ *56% of Americans Stop Buying From Brands They Believe Are Unethical*, Mintel (Nov. 18, 2015), <https://bit.ly/3ZmfXIC>.

⁶⁰ *Id.*

58. A survey of 5,000 consumers showed that significant segments of the national consumer base prioritize “more transparency from food producers and retailers,” “accountability and transparency through the entire food supply chain,” and “fair treatment of workers.”⁶¹

59. Another survey found that “81 percent” of consumer respondents said that “purchasing ethically sourced and/or produced products matters,”⁶² and are willing to pay more for an ethical product based on the product marketing and packaging.⁶³

60. When it comes to child labor, more than 75 percent of consumers would no longer purchase from brands they knew were employing child labor, even if the consumers had often bought from these brands in the past.⁶⁴

61. According to a 2024 Dynata survey polling national consumers who purchase chocolate regularly, over 50 percent believe that the use of the Rainforest Alliance seal on chocolate products means that it is “unlikely” (21%) or “very unlikely” (40%) that child or forced labor is part of the chocolate products’ supply chain.

62. According to that same survey, 52 percent of respondents believe that the use of the Rainforest Alliance seal on a chocolate product means that it is a “sustainable product,” while 53 percent of reasonable consumers believe that “practices that reduce deforestation are routinely utilized within the supply chain of this chocolate product.”

⁶¹ News Desk, *Consumer Survey Shows Changing Definition of Food Safety*, Food Safety News (Feb. 4, 2016) <https://www.foodsafetynews.com/2016/02/123246/>.

⁶² Steve Banker, *Do Consumers Care About Ethical Sourcing?*, Forbes (Oct 5, 2021), <https://www.forbes.com/sites/stevebanker/2021/10/05/do-consumers-care-about-ethical-sourcing/?sh=4c6fe92c5f50>.

⁶³ *Report Shows Consumers Want Sustainable Products*, PDI Technologies (April 26, 2023), <https://pditechnologies.com/resources/report/2023-business-sustainability-index/>, and McKinsey and Company, *Consumers care about sustainability – and back it up with their wallets* (Feb. 6, 2023), <https://www.mckinsey.com/industries/consumer-packaged-goods/our-insights/consumers-care-about-sustainability-and-back-it-up-with-their-wallets> (last visited Jan. 17, 2024).

⁶⁴ *Majority (55%) of Americans Willing to Pay More for Clothing Not Made Using Child Labor*, Ipsos (July 18, 2013), <https://www.ipsos.com/en-us/majority-55-americans-willing-pay-more-clothing-not-made-using-child-labor>.

63. The 2024 Dynata survey also found that 46 percent of those polled believe that the Rainforest Alliance seal illustrates that “the supply chain of this chocolate product has less of a negative impact on the environment than chocolate products without this logo.”

64. In the 2024 Dynata survey, a majority of regular chocolate bar consumers claimed that they consider fair labor factors when deciding whether to purchase chocolate products. Specifically, 43 percent consider the conditions and treatment of the workers who harvest the cocoa used in the chocolate products; 41 percent consider whether the workers who harvest the cocoa used in the chocolate products receive fair compensation for their labor; and 41 percent also consider whether there may be forced and/or child labor associated with the cocoa used in the chocolate production.

65. Also, in the 2024 Dynata survey, when consumers were shown an image of the Rainforest Alliance seal asked what they understand “People & Nature” to convey about the chocolate product bearing this logo, answers included, but were not limited to:

- “That the chocolate was ethically sourced and the workers were fairly and humanely treated and compensated”;
- “Companies that use this label pledge to promote human rights and protect the environment in the production of their products”;
- “The chocolate produced helps the local people by providing jobs while [also] protecting the [environment of] the area”;
- “[The chocolate] was harvested by people that are legal age and are not slave related”;
- “This product has been produced with as little as impact as possible on nature and that the people involved are treated fairly and humanely”;

- “This chocolate I purchase has been cleared of unfair trade and labor”;
- “No trafficking of underpaid labor when it comes to workers and somehow they take care of nature while making chocolate too”;
- “No one was exploited in the making of this product”;
- “[The chocolate] is produced without child labor and in a way that is better for the environment and rainforest”;
- “[The product is] ecofriendly and humane labor law friendly”; and
- “The product is made in such a way as to not harm people or nature; no slave labor and no deforestation [occurs].”

66. Because there have been many documented instances of Rainforest Alliance’s certification failing to ensure fair labor conditions and Hershey’s failure to guarantee that the cocoa used in its Rainforest Alliance certified cocoa Products is in fact “sustainable,” “100 percent certified and sustainable,” “responsibly sourced,” and meets “rigorous sustainability standards” under “the highest level of assurance,” Defendants’ marketing of the Products as responsibly sourced and sustainable is misleading to reasonable consumers.

67. Furthermore, Rainforest Alliance is aware of the fact that “consumers today build trust (and buying preference) with brands that do good.”⁶⁵ Rainforest Alliance explains ways to “leverage the ‘little green frog’” to “craft a powerful story that fits your brand,” and how to “get your messaging right” to market your Rainforest Alliance certified product.⁶⁶ These suggestions reveal Rainforest Alliance’s understanding of how its certification seal plays a role in benefiting

⁶⁵*The Ultimate Guide to Marketing Your Rainforest Alliance Certified Product*, Rainforest Alliance (Feb. 18, 2020), <https://www.rainforest-alliance.org/business/marketing-sustainability/the-ultimate-guide-to-marketing-your-rainforest-alliance-certified-product>.

⁶⁶ *Id.*

companies, like Hershey, in misleading consumers.

68. Moreover, other consumers have also started taking a stand against Rainforest Alliance-certified chocolate companies that have been accused of using unfair labor practices and hazardous child labor in their supply chain.⁶⁷

PARTIES

69. Defendant The Hershey Company is headquartered in Hershey, Pennsylvania and incorporated in Delaware. Hershey is a confectionary company and the largest producer of chocolate products in North America with Products available in a wide variety of national supermarket chains, regional stores, and other outlets, including stores in Illinois.

70. Defendant Rainforest Alliance Inc. is incorporated and headquartered in New York, New York. Rainforest Alliance is an international organization whose stated mission is to create a more sustainable world by using social and market forces to protect nature and improve the lives of farmers and forest communities.

71. Defendant Rainforest Alliance earns royalties based on the volume of cocoa beans Defendant Hershey purchases from Rainforest Alliance certified farms, currently set at \$12.90 USD per metric ton of cocoa beans.⁶⁸ This intrinsically links Rainforest Alliance with Hershey's success and provides a significant incentive for Rainforest Alliance to increase the marketability of the Products to consumers.

⁶⁷ See *Walker v. Nestle USA, Inc.*, No. 3:19-cv-723-L-DEB, 2022 U.S. Dist. LEXIS 56178, at *1-2 (S.D. Cal. Mar. 28, 2022) (denying motion to dismiss claims that “statements [were] deceptive because they falsely lead consumers to believe that the products were produced in accordance with [] socially responsible standards”)

⁶⁸ *Rainforest Alliance License Agreement General Terms and Conditions* (Aug. 2023), <https://www.rainforest-alliance.org/wp-content/uploads/2021/06/Rainforest-Alliance-License-Agreement-General-Terms-Conditions.pdf>.

72. Plaintiff Eric Yeh is an individual consumer who is currently a citizen of Arlington Heights, Illinois.

73. During the Class Period, Plaintiff Yeh purchased Hershey's Organic Milk Chocolate Candy Bars bearing the Rainforest Alliance certification seal,⁶⁹ one of the Products at issue, approximately three to four times between 2022 and 2023 at a Walmart store located at 1455 E Lake Cook Rd. in Wheeling, IL.

74. Plaintiff Yeh, when he purchased the Products, saw and believed that the Hershey Products support fair wages, ethical labor practices and sustainable environmental standards in its supply chain, based on the Rainforest Alliance certification displayed on the Products' packaging, which was advertised with Rainforest Alliance's consent. The fair-trade representations of the Products were material to Plaintiff Yeh and encouraged him to make his purchases. Plaintiff Yeh relied upon these representations, which as a consumer he had no reason to doubt.

75. Plaintiff Yeh would not have purchased the Products or would not have purchased the Products on the same terms, if he had known that contrary to Defendants' representations, the Product was not ethically sourced, but that, in fact, unfair labor practices and hazardous child labor were present in the Products' supply chain.

76. As a direct result of Defendants' material misrepresentations and omissions, Plaintiff suffered, and continues to suffer, economic injuries.

77. On December 20, 2023, Plaintiff sent Hershey a letter about the allegations set forth in this Complaint.

78. On December 20, 2023, Plaintiff sent Rainforest Alliance a letter about the

⁶⁹ While Hershey has discontinued its organic chocolate line on its website, it is still available from retail stores across the country. *See Results for "Hershey organic chocolate,"* Walmart, <https://www.walmart.com/search?q=Hershey+organic+chocolate> (last visited Jan. 17, 2024).

allegations set forth in this Complaint.

79. Accordingly, Plaintiff Yeh, on behalf of himself and all other members of the proposed Class, seeks relief, including punitive damages, from Defendants' acts and practices.

JURISDICTION AND VENUE

80. This Court has personal jurisdiction over the parties in this case.

81. Defendant Hershey regularly conducts and transacts business in Illinois, purposefully avails itself of the laws of Illinois, markets the Product to consumers in Illinois, and sells the Product throughout Illinois.

82. Defendant Rainforest Alliance regularly conducts and transacts business in Illinois, purposefully avails itself of the laws and privileges of conducting activities in Illinois, and participates in the marketing of the Products, which it knows are marketed and sold to consumers in Illinois.

83. Defendant Rainforest Alliance, by participating in the marketing of the Products that it knows are marketed and sold to consumers in Illinois has purposefully directed its conduct to consumers in Illinois.

84. Plaintiff Yeh's claims arise out of, and relate to, the conduct of both Hershey and Rainforest Alliance within Illinois.

85. Defendants' Products can be found throughout the state of Illinois, at Walmart and Target stores, among other retailers.

86. Based on the foregoing, the exercise of jurisdiction over Defendants is reasonable under the circumstances.

87. Plaintiff Yeh is a citizen of Illinois and consents to this Court's jurisdiction.

88. This Court has original subject-matter jurisdiction over this proposed class action pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), which provides for the original

jurisdiction of the federal courts in any class action in which the proposed plaintiff class is comprised of at least 100 members, any member of the plaintiff class is a citizen of a State different from any defendant, and the matter in controversy exceeds the sum of \$5,000,000, exclusive of interest and costs. Plaintiff Yeh alleges that the total claims of individual members of the proposed Class (as defined herein) exceed \$5,000,000 in the aggregate, exclusive of interest and costs.

89. Venue is proper in this District under 28 U.S.C. § 1391(a). Substantial acts in furtherance of the alleged improper conduct, including the dissemination of false and misleading information regarding the nature and quality of the Products, occurred within this District.

CLASS ALLEGATIONS

90. Plaintiff Yeh brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and all others similarly situated individuals nationwide (the “Class”), defined as follows:

All consumers who purchased the Products within the United States during the applicable statute of limitations period (the “Class Period”) and until the date of class certification.

91. Included in the Class, to the extent necessary, is a subclass of all persons who purchased the Product (as defined herein) in Illinois during the Class Period (the “Illinois Subclass”).

92. Excluded from the Class are (1) Defendants, (2) any entity or division in which either Defendant has a controlling interest, (3) Defendants’ legal representatives, officers, directors, assigns, and successors; and (4) the judge to whom this case is assigned and the judge’s staff.

93. Questions of law and fact common to all Class members predominate over questions affecting only individual Class members. These common questions of law and fact include, without limitation:

- (a) Whether, and in which proportion, Defendants are responsible for the advertising at issue;
- (b) Whether the advertising of the Products was unfair, false, deceptive, fraudulent and/or unlawful;
- (c) Whether Defendants breached a warranty created through the marketing of the Products; and
- (d) Whether Defendants' conduct as set forth above injured Plaintiff Yeh and Class members.

94. Plaintiff Yeh's claims are typical of the claims of the Class in that he was exposed to Defendants' false and misleading marketing and promotional materials and representations, purchased the Product, and suffered a loss as a result of those purchases.

95. The precise number of the Class members and their identities are unknown to Plaintiff Yeh at this time but may be determined through discovery.

96. Plaintiff Yeh is an adequate representative of the Class because his interests do not conflict with the interests of the Class members he seeks to represent, he has retained competent counsel experienced in prosecuting class actions involving false advertising, and he intends to prosecute this action vigorously.

97. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Class members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the litigation necessary to establish Defendants' liability. A class action provides a fair and efficient method, if not the only method, for adjudicating this controversy and avoids the potential for inconsistent or contradictory judgments. The substantive claims of Plaintiff Yeh and the Class are identical or nearly identical and will require evidentiary proof of the same kind and application of the same laws. There is no plain, speedy, or adequate remedy other than by maintenance of this class action.

98. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because Class members number in the thousands and individual joinder is impracticable. The expense and burden of individual litigation would make it impracticable or impossible for proposed Class members to prosecute their claims individually, and the disposition of this case as part of a single class action lawsuit will benefit the parties and greatly reduce the aggregate judicial resources that would be spent if this matter were handled as hundreds or thousands of separate lawsuits. Trial of Plaintiff Yeh's and the Class members' claims together is manageable. Unless the Class is certified, Defendants will remain free to continue to engage in the wrongful conduct alleged herein without consequence.

99. No member of the Class has a substantial interest in individually controlling the prosecution of a separate action.

100. The prerequisites to maintaining a class action for equitable relief are met. By representing that the cocoa in the Products, sold by Hershey and certified by Rainforest Alliance, "sustainable," "100 percent certified and sustainable," "responsibly sourced," meet "rigorous sustainability standards," and are certified with "the highest level of assurance," despite the presence of unfair labor practices and hazardous child labor in the supply chain, Defendants have acted or refused to act on grounds generally applicable to the Class, thereby, making appropriate final equitable and monetary relief with respect to the Class as a whole.

101. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendants. Additionally, individual actions could be dispositive of the interests of the Class, in practice, even where certain Class members are not parties to such actions.

102. Defendants' conduct is generally applicable to the Class as a whole, and Plaintiff Yeh seeks, *inter alia*, equitable remedies with respect to the Class as a whole.

103. Plaintiff Yeh knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance of a class action.

CAUSES OF ACTION

COUNT I

Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (On Behalf of Plaintiff Yeh and the Illinois Subclass) (Against All Defendants)

104. Plaintiff Yeh realleges and incorporates herein by reference all preceding paragraphs of this Complaint as though set forth and at length herein.

105. The acts of each Defendant, as described above, constitute unlawful, deceptive, and fraudulent business acts and practices.

106. Defendants market the Products with the Rainforest Alliance seal bearing the words "People & Nature," and as containing cocoa that is "sustainable," "100 percent certified and sustainable," "responsibly sourced," meeting "rigorous sustainability standards," and certified with "the highest level of assurance," when investigation by Plaintiff Yeh and his counsel reveal the Products were sourced using unfair labor practices and hazardous child labor.

107. Defendants have violated, and continue to violate, § 505 of the Illinois Business Transactions Law, which makes deceptive acts and practices unlawful. As a direct and proximate result of Defendants' violation of § 505, Plaintiff Yeh and other members of the Illinois Subclass have suffered damages in an amount to be determined at trial.

108. Defendants' improper consumer-oriented conduct is misleading in a material way in that they, *inter alia*, induced Plaintiff Yeh and the Illinois Subclass members to purchase and

to pay the requested price for the Product when they otherwise would not have, or would not have purchased as much.

109. Defendants made the untrue and/or misleading statements and representations willfully, wantonly, and with reckless disregard for the truth.

110. Plaintiff Yeh and the Illinois Subclass members have been injured by their purchase of the Products, which were worth less than what they bargained and/or paid for, and which they selected over other products that may have been truthfully marketed.

111. Defendants' advertising induced Plaintiff Yeh and the Illinois Subclass members to buy the Products, to buy more of them, and/or to pay the price requested.

112. As a direct and proximate result of Defendants' violation of § 505/2, Plaintiff Yeh and other members of the Illinois Subclass paid for falsely advertised Products and, as such, have suffered damages in an amount to be determined at trial.

113. By reason of the foregoing, Plaintiff Yeh and the Illinois Subclass members are entitled to (1) actual damages and/or statutory damages; (2) punitive damages; and (3) reasonable attorneys' fees, pursuant to § 505/10a(a) and (c).

COUNT II
**Violations of the Illinois Consumer Fraud and Deceptive
Business Practices Act § 510/2**
(On Behalf of Plaintiff and the Illinois Subclass)
(Against Defendant Hershey Only)

114. Plaintiff Yeh realleges and incorporates herein by reference all preceding paragraphs of this Complaint as though set forth and at length herein.

115. The acts of Defendant Hershey, as described above and herein, constitute unlawful, deceptive, and fraudulent business acts and practices.

116. Illinois Business Transactions Law § 510/2 makes deceptive trade practice unlawful.

117. Section 510/2(a)(2) defines “deceptive trade practice,” in relevant part, as occurring when the person “causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services.”

118. Plaintiff Yeh and the members of the Illinois Subclass are consumers who purchased Defendant Hershey’s Products in Illinois.

119. As a seller of goods to the consuming public, Defendant Hershey is engaged in the conduct of business, trade, or commerce within the intended ambit of § 510/2.

120. Defendant Hershey’s representations (made by statement, word, design, device, sound, or any combination thereof), and also to the extent to which Hershey’s advertising has failed to reveal material facts with respect to its Products, as described above, have constituted false advertising and deceptive trade practices in violation of § 510/2.

121. Defendant Hershey’s willful actions led to direct, foreseeable, and proximate injury to Plaintiff Yeh and the members of the Illinois Subclass.

122. As a consequence of Defendant Hershey’s deceptive marketing scheme, Plaintiff Yeh and the other members of the Illinois Subclass suffered an ascertainable loss, insofar as they would not have purchased the Products had the truth about the Products’ nature and quality been known, would not have paid the requested price for the Products, and/or would have purchased fewer of the Products. As a result of Hershey’s conduct, Plaintiff Yeh and the other members of the Illinois Subclass received products of less value than what they paid for.

123. By reason of the foregoing, Plaintiff Yeh and the Illinois Subclass members are entitled to (1) reasonable attorneys’ fees and (2) injunctive relief, pursuant to § 510/3.

COUNT III
Breach of Express Warranty
(on Behalf of Plaintiff Yeh and All Class Members)
(Against All Defendants)

124. Plaintiff Yeh realleges and reincorporates by reference all paragraphs alleged above.

125. Plaintiff Yeh brings this claim individually and on behalf of the Class.

126. Defendants provided Yeh and other members of the Class with written, express warranties that the cocoa in these chocolate Products were “100% certified sustainable,” language placed throughout Defendant Hershey’s website and easily accessible to any consumer.

127. Defendant Rainforest Alliance markets Hershey’s Products with its “sustainable” certification label for the Cocoa in the Product, and also on its website, stating that Hershey’s cocoa is “grown and harvested on farms and forests that follow sustainable practices.”⁷⁰

128. This affirmation of fact or promise by Defendants relates to the goods and became part of the basis of the bargain.

129. Plaintiff Yeh and members of the Class purchased the Products believing them to conform to the express warranties.

130. Defendants Hershey and Rainforest Alliance breached these warranties, resulting in damages to Plaintiff Yeh and other members of the Class, who bought Defendants’ Products but did not receive the goods as warranted.

131. As a proximate result of the breach of warranties by Hershey and Rainforest Alliance, Plaintiff Yeh and the other members of the Class did not receive the goods as warranted. Moreover, had Plaintiff Yeh and the Class members known the true facts, they would not have

⁷⁰ *Certified Product: Hershey’s*, *supra* note 15.

purchased Defendants' Products, or would have purchased the Products on different terms, or would have purchased fewer of the Products.

132. Notice of these breaches of warranty was provided to Defendants as described in *supra* ¶¶ 77, 78, which is incorporated here by reference as if fully set forth herein.

133. Plaintiff Yeh and the members of the Class therefore have been injured and have suffered damages in an amount to be proven at trial.

COUNT IV
Unjust Enrichment
(on Behalf of Plaintiff Yeh and All Class Members)
(Against All Defendants)

134. Plaintiff Yeh realleges and reincorporates by reference all paragraphs alleged above.

135. Plaintiff Yeh brings this claim individually and on behalf of the Class.

136. To the extent required by law, this cause of action is alleged in the alternative to legal claims, as permitted under Fed. R. Civ. P. 8.

137. Plaintiff Yeh and the members of the Class conferred benefits on Defendant Hershey by purchasing the Products.

138. Plaintiff Yeh and the members of the Class conferred benefits on Defendant Rainforest Alliance via the volume-based royalties that Rainforest Alliance receives from Hershey when the Products are purchased.

139. Defendants were unjustly enriched by receipt of these revenues derived from the purchases of Plaintiff Yeh and the members of the Class.

140. Retention of those moneys under these circumstances is unjust and inequitable because Defendants misrepresented its Products as sustainable and ethically sourced, when they in fact neither sustainable nor ethically sourced.

141. Plaintiff Yeh and members of the Class were damaged by Defendants' misrepresentations because they would not have purchased the Products if the true facts were known.

142. Because Defendants' retention of the non-gratuitous benefits conferred on them by Plaintiff Yeh and the members of the Class is unjust and violates the fundamental principles of justice, equity, and good conscience, Defendants have been unjustly enriched in an amount to be determined at trial.

143. Plaintiff Yeh and the members of the Class have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Yeh respectfully requests that the Court enter judgment in his favor and in favor of the Class as follows:

A. An order certifying the proposed Class and Subclass; appointing Plaintiff Yeh as representative of the Class and Subclass; and appointing Plaintiff Yeh's undersigned counsel as class counsel for the Class and Subclass;

B. An order declaring that Defendants are financially responsible for notifying Class members of the pendency of this suit;

C. An order declaring that Defendants' conduct violates the statutes referenced herein;

D. An order awarding monetary damages, including actual damages, statutory damages, and punitive damages, in the maximum amount provided by law under the statutes named herein;

E. An order awarding compensation for breach of warranty;

F. An order for prejudgment interest on all amounts awarded;

G. An order awarding Plaintiff Yeh and the other Class members the reasonable costs and expenses of suit, including their attorneys' fees; and

- H. An order of restitution and all other forms of equitable monetary relief;
- I. Injunctive relief as pleaded or as the Court may deem proper;
- J. Any further relief that the Court may deem appropriate.

JURY TRIAL DEMANDED

144. Plaintiff Yeh hereby demands a trial by jury.

DATED: January 18, 2024

RICHMAN LAW & POLICY



Kim E. Richman (*Pro Hac Vice* forthcoming)
1 Bridge Street, Suite 83
Irvington, NY 10533
T: (914) 693-2018
krichman@richmanlawpolicy.com

/s/ Christopher J. Esbrook
Christopher J. Esbrook (ARDC No.
6282829)
Marie Plecha (ARDC No. 6339526)
América Guzmán (ARDC No. 6335974)
Esbrook P.C.
321 N. Clark Street, Suite 1930
Chicago, IL 60654
T: (312) 319-7681
christopher.esbrook@esbrook.com
marie.plecha@esbrook.com
america.guzman@esbrook.com

Attorneys for Plaintiff and Proposed Class